

November 30, 2005

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

400 Yesler Way, Room 404  
Seattle, Washington 98104  
Telephone (206) 296-4660  
Facsimile (206) 296-1654

**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **E0500545**

**DAVID VAN VLEET**  
Code Enforcement Appeal

Location: 11231 Southeast 220th Place

Appellant: **David Van Vleet**  
11231 Southeast 220th Place  
Kent, Washington 98031  
Telephone: (253) 856-2313

King County: Department of Development and Environmental Services (DDES),  
*represented by* **Bill Turner**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055-1219  
Telephone: (206) 296-7084  
Facsimile: (206) 296-6604

**SUMMARY OF DECISION/RECOMMENDATION:**

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal, extend dates of compliance

**EXAMINER PROCEEDINGS:**

Hearing Opened:	November 3, 2005
Hearing Closed:	November 3, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.  
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On August 30, 2005, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Appellant David Van Vleet that alleges code violations at and adjacent to property located at 11231 Southeast 220th Place. The Notice and Order cites the Appellant and the property for violations by parking/storage of inoperable vehicles on the property and by parking/storage of commercial equipment/vehicles on the property and in county road right-of-way in violation of county code.

The Notice and Order required that by September 30, 2005, the inoperable vehicles be removed from the premises or stored within a fully-enclosed building and that the parking/storage of commercial equipment/vehicles on the property or in the county right-of-way be ceased.

2. Mr. Van Vleet, owner of the property, filed a timely appeal of the Notice and Order. The appeal makes the following claims:
  - A. The County code provisions cited by the Notice and Order as being violated are unconstitutional as they abridge the use of the Appellant's private property.
  - B. DDES improperly and inequitably refuses to honor a March 2, 2005 Certificate of Compliance<sup>1</sup> resulting from a previous code enforcement case (E0300952) involving similar issues on the property, which Certificate the Appellant asserts was based in part on the express verbal acceptance by DDES of an inoperable brown Jeep SUV (apparently a Grand Cherokee model) to remain in exterior storage on the property as a *de minimis* violation. DDES has stated that its Certificate was issued in error. The Appellant contends that DDES must keep what the Appellants asserts is an implied commitment in its issuance of the Certificate of Compliance and that its failure to do so places the Appellant in double jeopardy (being charged twice for the same violation) and is based purely on neighbor complaints improperly influencing DDES. (Also see Findings 4 and 6.)
  - C. DDES and the King County Sheriff's Office (KCSO) are harassing the Appellant and violating the Appellant's civil and property rights by improperly and overly vigorously responding to a self-appointed neighborhood committee which is applying a double standard to Appellant's property compared to other properties in the area, a number of which the Appellant contends have similar violations. The Appellant requests that the County issue a restraining order/letter of warning be issued to Tracy Hancock (a neighbor and apparently the lead of the committee) and the committee to cease violations of the Appellant's civil and property rights, and requests \$500,000 in civil damages compensation be paid to him.
  - D. The Appellant also argues on oral argument that the code standards at issue are unreasonable.
3. The property is zoned R-6, an urban residential zone. Storage of commercial equipment/vehicles is not permitted in such zone; nor is the exterior storage of inoperable vehicles. The Appellant claims that he does not have commercial vehicles/equipment stored or parked at his residence on the subject property.

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<sup>1</sup> Issued pursuant to KCC 23.24.040(B).

4. The Appellant stipulates that the Jeep Grand Cherokee onsite is inoperable but as noted contends that the exterior storage of that vehicle was tacitly accepted by DDES in its issuance of the Certificate of Compliance, based on oral representations of DDES enforcement personnel prior to its issuance. The Appellant notes that DDES later stated that the Certificate of Compliance was issued in error. (Although no formal withdrawal of the Certificate is evident, a letter was sent to the Appellant on June 3, 2005 stating that the exterior storage of the inoperable Jeep was in violation of the County code and had to be ceased. The DDES staff report on the appeal states that the Certificate had been issued in error.)
5. The storage of the brown Jeep Grand Cherokee on the exterior of the property is in violation of county code as charged and the Notice and Order is correct with respect to that charge.
6. The Appellant's claim that the implicit withdrawal of the Certificate of Compliance is inequitable is a common law defense essentially asserting *equitable estoppel*, i.e., arguing that DDES should be constrained from now enforcing what it previously had accepted as sufficient for compliance and documented as such by the Compliance Certificate. While it appears that DDES would be within its rights, indeed perhaps under an obligation, to correct an error of this type, regardless, issues of equity cannot be decided by a quasi-judicial administrative hearing officer such as the Hearing Examiner. They must be brought in a court of law. (See Conclusion 1.)
7. The Appellant also stipulates to the backhoe at issue as being onsite for 30 days or more and intends to remove it within 30 days. Construction equipment is permissible to be parked on a residential property if actively engaged in ongoing construction work on the premises but not during unreasonably long gaps in such work. Parking during long interruptions of construction constitutes outside storage of commercial equipment, a violation of County land use regulations.<sup>2</sup>
8. The preponderance of the evidence in the record demonstrates that the exterior storage of the backhoe on the property is in violation of the zoning code sections cited.
9. The Examiner cannot sustain the charged violation of KCC 46.04.060(B) governing parking of commercial equipment (the backhoe) on public right-of-way. One of the components required for finding violation of that section of the code is that the vehicle in question be over 80 inches in width. That has not been demonstrated in the record.
10. The testimony that the Honda Accord which is located in the Appellant's driveway is operable was not refuted in the record. Testimony by DDES that certain vehicles on the property "*may* be inoperable" (emphasis added) is unpersuasive of violation, as are testimonial references to photographic logs and other numerous photographs taken of alleged violations but which were not introduced into evidence. Those assertions are not considered of probative value in determining the facts of code violation.
11. The evidence in the record has also not shown the commercial nature of the blue flatbed truck parked in the Appellant's driveway. Such vehicles are not automatically commercial in nature, although certainly they are commonly used for commercial activity. But they can also be used as part of a residential use, for hauling personal recreational vehicles such as dirt bikes, snowmobiles, ATVs, river rafts, etc. It simply has not been demonstrated in the record that the blue flatbed truck is used for commercial purposes, and therefore it cannot be found that its existence on the property constitutes storage of a commercial vehicle.

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<sup>2</sup> Definitions, formal or informal, of "commercial vehicles" applied by KCSO in traffic and parking enforcement are not definitive or overriding in land use regulatory matters, which are bound by different sets of definitions and interpretations.

12. In summary, the evidence in the record supports the finding that the charges of violation in the Notice and Order are correct with respect to the brown Jeep Grand Cherokee and the backhoe. No other aspects brought forward in the charges are found to be in violation.

#### CONCLUSIONS:

1. The Appellant's argument that it is unfair for the County to engage in code enforcement on the subject property when other properties in the area have similar violations is an equity issue over which the Examiner has no authority. Similar to the Appellant's claim regarding the issued Compliance Certificate, it is tantamount to a common law claim of *equitable estoppel*, that the county should be barred from enforcing the matters at hand because of unequal treatment. The Examiner as a quasi-judicial hearing officer is generally limited to adjudicating matters under "black letter" law, *i.e.*, law enacted in statutory or ordinance form. Washington case law limits the Examiner's exercise of common law in deciding cases. [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 638, 689 P.2d 1084 (1984)] Any equity claim would have to be brought in a court of law (a court of general jurisdiction, *i.e.*, Superior Court).
2. Similarly, claims of harassment consisting of overly vigorous enforcement, etc., are equity and/or civil rights issues which must be raised in a different forum.
3. The claim of the unconstitutionality of the County's land use regulations at issue amounts to a facial challenge of the County code on constitutional grounds. Similarly, that must be brought in a court of law and is not under the authority of the Examiner to adjudicate.
4. That the code standards at issue may be unreasonable as claimed by the Appellant is not a matter under the Examiner's authority to address. Remedies to the asserted unreasonableness of the law must be sought in the legislative forum, or in the courts as a matter of equity (or possibly constitutionality).
5. The Appellant's claim of double jeopardy by DDES's twice charging what the Appellant claims is the "same offense" is unpersuasive. Each instance of violation, *i.e.*, each separate day of violation, is a separate violation. In any case, the double jeopardy claim must be adjudicated by a court of law.
6. The Examiner has no authority to issue a restraining order or a letter of warning, nor to award civil damages compensation. Those matters would have to be pursued in other venues.
7. With respect to the Jeep and the backhoe, the charges of the Notice and Order are correct and the Notice and Order should be sustained, except that since the deadlines for compliance imposed by the Notice and Order have been obviated by the appeal process, the Examiner shall impose new deadlines for compliance.

#### DECISION:

The appeal of the Notice and Order is **DENIED**, except that the deadlines for regulatory compliance are revised and extended as stated in the following order.

#### ORDER:

1. The brown Jeep Grand Cherokee shall be brought into operable condition, removed from the premises, or stored within a fully-enclosed building *by no later than* **February 28, 2006**.

2. The backhoe shall be removed from the site and/or the fronting King County road right-of-way *by no later than **January 9, 2006***, except that it may be brought onto the property when used in active construction activity associated with the residential use and improvement of the site.
3. No penalties shall be assessed against the Appellant or the property if the above conditions are met. If any of the deadlines stated in the above conditions are not met, DDES may assess penalties against the Appellant and the property retroactive to the date of this order.

ORDERED this 30th day of November, 2005.

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Peter T. Donahue, Deputy  
King County Hearing Examiner

TRANSMITTED this 30th day of November, 2005 via certified mail to the following:

David Van Vleet  
11231 SE 220th Pl.  
Kent WA 98031

TRANSMITTED this 30th day of November, 2005, to the following parties and interested persons of record:

James & Kathy Capes  
11220 SE 220th Pl.  
Kent WA 98031

Lance & Karol Garrett  
11224 SE 220th Pl.  
Kent WA 98031

Roger & Traci Hancock  
11223 SE 220th Pl.  
Kent WA 98031

Rob & Lori Healy  
11204 SE 220th Pl.  
Kent WA 98031

Gary & Joyce Kroeger  
11212 SE 220th Pl.  
Kent WA 98031

David Van Vleet  
11231 SE 220th Pl.  
Kent WA 98031

Jeri Breazeal  
DDES/LUSD  
MS OAK-DE-0100

Suzanne Chan  
DDES, Code Enf.  
MS OAK-DE-0100

DDES, Code Enf. Billing  
MS OAK-DE-0100

Trudy Hintz  
DDES/LUSD  
MS OAK-DE-0100

Patricia Malone  
DDES/LUSD  
MS OAK-DE-0100

Lamar Reed  
DDES/LUSD  
MS-OAK-DE-0100

Bill Turner  
DDES/LUSD  
MS OAK-DE-0100

### NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly

commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE NOVEMBER 3, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0500545.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing was Bill Turner, representing the Department; David Van Vleet, the Appellant, and Roger Hancock, Lance Garrett and Rob Healy.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DDES staff report to the Hearing Examiner
- Exhibit No. 2 Copy of the Notice & Order issued August 30, 2005
- Exhibit No. 3 Copy of Notice and Statement of Appeal dated September 23, 2005, with cover letter dated September 16, 2005
- Exhibit No. 4 Copies of codes cited in the Notice & Order
- Exhibit No. 5 Copy of the Hearing Examiner's Report and for DDES file no. E0300952 – David Van Vleet
- Exhibit No. 6 Copy of June 3, 2005 letter from Code Enforcement Officer Sawin to Mr. Van Vleet (from E0300952 file)
- Exhibit No. 7 Photographs (2 pages of color copies) taken by Bill Turner on August 2, 2005
- Exhibit No. 8 Photographs (4 pages of color copies) taken by Bill Turner on November 2, 2005
- Exhibit No. 9 Compliance Certificate for E0300952 dated March 2, 2005
- Exhibit No. 10 Photograph (1 color copy) of front of Van Vleet residence taken February 22, 2005
- Exhibit No. 11 Photograph (1 color copy) of two vehicles on Mr. Schmidt's property
- Exhibit No. 12 Close-up photograph (1 color copy) of exh. 11 taken November 2, 2005
- Exhibit No. 13 Close-up photograph (1 color copy) of exh. 11 taken November 2, 2005
- Exhibit No. 14 Photograph (1 color copy) of vehicle parked in a neighbor's driveway taken November 2, 2005
- Exhibit No. 15 Photograph (1 color copy) of vehicles in neighbor's driveway, taken November 2, 2005
- Exhibit No. 16 Photograph (1 color copy) showing two vans parked in a neighbor's driveway
- Exhibit No. 17 Photograph (1 color copy) showing three Volkswagens parked in neighbor's driveway
- Exhibit No. 18 24 Hour Impound Notice re: backhoe from King County Sheriff dated July 30, 2005
- Exhibit No. 19 Traffic Infraction citation from King County Sheriff dated August 27, 2005 on Mr. Van Vleet's red truck
- Exhibit No. 20 Traffic Infraction citation from King County Sheriff dated September 21, 2005 on Mr. Van Vleet's red Dodge
- Exhibit No. 21 Traffic Infraction citation from King County Sheriff date January 22, 2005
- Exhibit No. 22 Note that was taped to Mr. Van Vleet's truck
- Exhibit No. 19 Citation from King County Sheriff dated August 27, 2005 on Mr. Van Vleet's red truck
- Exhibit No. 20 Citation from King County Sheriff dated September 21, 2005 on Mr. Van Vleet's Red Dodge
- Exhibit No. 21 Citation from King County Sheriff
- Exhibit No. 22 Note that was taped to Mr. Van Vleet's truck